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2 UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

3 -----x

4 FERNANDO HERNANDEZ, KENNETH CHOW,  
5 BRYANT WHITE, DAVID WILLIAMS, MARQUIS ACKLIN,  
6 CECILIA JACKSON, TERESA JACKSON,  
MICHAEL LATTIMORE, and JUANY GUZMAN, Each  
Individually, And On Behalf Of All Other  
Persons Similarly Situated,

7 Plaintiffs,

8 -against- Index No:  
12 CV 4339 (ALC) (JLC)

9

10 THE FRESH DIET, INC., LATE NIGHT EXPRESS  
11 COURIER SERVICES, INC. (FL), FRESH DIET EXPRESS  
12 CORP. (NY), THE FRESH DIET - NY INC. (NY),  
13 FRESH DIET GRAB & GO, INC. (FL) a/k/a  
YS CATERING HOLDINGS, INC. (FL) d/b/a  
YS CATERING, INC. (FL), FRESH DIET EXPRESS  
CORP. (FL), SYED HUSSAIN, Individually,  
14 JUDAH SCHLOSS, Individually, and ZAIMI DUCHMAN,  
Individually,

15 Defendants.

16 -----x

17

18 EXAMINATION BEFORE TRIAL of the  
19 Plaintiff, MARQUIS ACKLIN, taken by the  
20 Defendant, pursuant to Notice, held at the  
21 offices of Kaufman, Dolowich, Voluck & Gonzo  
22 LLP, 100 William Street, Suite 215, New York,  
23 New York 10038, on October 2, 2013, at 10:50  
24 a.m., before a Notary Public of the State of  
New York.

25

[Page 2]

1 APPEARANCES:  
2  
3  
4 THE HARMAN FIRM, PC  
5 Attorney for Plaintiffs  
6 200 West 57th Street, Suite 900  
7 New York, New York 10019  
8  
9 BY: PETER J. ANDREWS, ESQ.  
10  
11  
12 KAUFMAN, DOLOWICH, VOLUCK & GONZO LLP  
13 Attorneys for Defendants  
14 100 William Street, Suite 215  
15 New York, New York 10038  
16  
17 BY: YALE POLLACK, ESQ.  
18  
19 FILE #: 055611-0002  
20  
21 ALSO PRESENT:  
22 TERESA JACKSON  
23  
24  
25

[Page 3]

1  
2 STIPULATIONS  
3  
4 IT IS HEREBY STIPULATED AND AGREED by and  
5 between the attorneys for the respective parties  
6 herein, that filing, sealing and certification,  
7 and the same are, hereby waived.  
8  
9 IT IS FURTHER STIPULATED AND AGREED that  
10 all objections except as to the form of the  
11 question, shall be reserved to the time of the  
12 trial.  
13  
14 IT IS FURTHER STIPULATED AND AGREED that  
15 the within deposition may be signed and sworn to  
16 by an officer authorized to administer an oath,  
17 with the same force and effect as if signed and  
18 sworn to before the Court.  
19  
20  
21  
22  
23  
24  
25

[Page 4]

1  
2 MARQUIS ACKLIN, the witness  
3 herein, having been first duly sworn by a  
4 Notary Public of the State of New York, was  
5 examined and testified as follows:  
6 EXAMINATION BY  
7 MR. POLLACK:  
8 Q. State your name for the record, please.  
9 A. Marquis Acklin.  
10 Q. State your address for the record,  
11 please.  
12 A. 21 Dickerman Street, Apartment 3,  
13 New Haven, Connecticut 06511.  
14 Q. Good morning, Mr. Acklin.  
15 A. Good morning.  
16 Q. My name is Yale Pollack. I represent  
17 the defendants in the litigation that you have  
18 commenced against my clients. Today I'm going  
19 to be asking you a series of questions  
20 concerning your claims in this action.  
21 If you don't understand any question  
22 that I ask, just please let me know. I'll try  
23 to rephrase it until you can get an  
24 understanding of the question. I'm going to  
25 ask that you answer all questions verbally so

[Page 5]

1 M. Acklin  
2 that the court reporter can take down the  
3 answers, and if you need to take a break at any  
4 time, please let me know. The only caveat is  
5 if there's a question pending, I'm going to ask  
6 that you answer the question before requesting  
7 the break.  
8 Do you understand those instructions?  
9 A. Yes.  
10 Q. Are you taking any medications today?  
11 A. No.  
12 Q. Are you under the influence of drugs or  
13 alcohol?  
14 A. No.  
15 Q. Can you think of anything that may  
16 impair your ability to truthfully respond to my  
17 questions today?  
18 A. No.  
19 Q. Did you review any documents in  
20 preparation for today's deposition?  
21 A. No.  
22 Q. Did you speak with anyone in preparation  
23 for today's deposition?  
24 A. No.  
25 Q. Are you currently employed?

[2] (Pages 2 to 5)

[Page 6]

1 M. Acklin  
2 A. Yes.  
3 Q. Where are you employed?  
4 A. PCF in Hamden, Connecticut.  
5 Q. What was it, PCF?  
6 A. Yeah. It's paper delivery.  
7 (Whereupon, a discussion was  
8 held off the record.)  
9 Q. What do you do for PCF?  
10 A. I deliver newspapers.  
11 Q. How long have you been working for PCF?  
12 A. Three and a half months.  
13 Q. Three and a half months?  
14 A. (Witness nods head.)  
15 Q. How are you paid by PCF?  
16 A. A check.  
17 Q. Is it weekly, biweekly?  
18 A. Biweekly.  
19 Q. Do you know if you receive an hourly  
20 wage?  
21 A. No.  
22 Q. You do not receive an hourly wage?  
23 A. No. I get a percentage of the papers  
24 that I deliver.  
25 Q. Do you know if you're considered an

[Page 7]

1 M. Acklin  
2 independent contractor by PCF?  
3 A. Yeah.  
4 MR. ANDREWS: Objection.  
5 Q. Yes?  
6 A. (Witness nods head.)  
7 MR. ANDREWS: If I object, it's  
8 for the record. Try to answer it.  
9 Q. Did you sign any kind of agreements in  
10 connection with your work for PCF?  
11 A. No.  
12 Q. You're paid a percentage of the papers  
13 you deliver?  
14 A. Yes.  
15 Q. Can you explain that further?  
16 A. Either I get paid -- I get paid on how  
17 much -- how many papers I deliver.  
18 Q. Is it based on a number of papers you  
19 deliver?  
20 A. Yeah.  
21 Q. Are you paid a certain amount per paper?  
22 A. Yeah.  
23 Q. What is that amount?  
24 A. I forgot it.  
25 Q. Do you know if it's more than a dollar?

[Page 8]

1 M. Acklin  
2 A. No.  
3 Q. Less than a dollar?  
4 A. Yeah.  
5 Q. Did the amount of papers you deliver  
6 vary from day to day?  
7 A. Yeah. It's the same for Mondays to  
8 Wednesdays. Then it goes up Thursday to  
9 Sunday.  
10 Q. What days of the week do you work for  
11 PCF?  
12 A. Every day.  
13 Q. Monday through Sunday?  
14 A. Yeah.  
15 Q. What are your hours?  
16 A. 2:30 to 8:30.  
17 Q. 2:30 p.m. or a.m.?  
18 A. A.m.  
19 MR. ANDREWS: I'm sorry. I  
20 didn't hear that last part. 2:30 a.m.  
21 to --  
22 THE WITNESS: 8:30.  
23 MR. ANDREWS: I'm sorry.  
24 Q. To 8:30 a.m.?  
25 A. Yeah.

[Page 9]

1 M. Acklin  
2 Q. It's about six hours?  
3 A. Yeah.  
4 Q. Is that, generally, the same Monday  
5 through Sunday?  
6 A. That's for around Fridays to Sundays.  
7 Through Monday to Thursday, it's around 6:30.  
8 Q. To 2:30 a.m. to 6:30 a.m.?  
9 A. Yeah.  
10 Q. Mondays through Thursdays?  
11 A. Yeah.  
12 Q. What type of papers do you deliver?  
13 A. New Haven Register, the Daily News, The  
14 New York Times, the Post, the Connecticut Post,  
15 and the Hartford Courant.  
16 Q. Do you deliver to residences?  
17 A. Yeah.  
18 Q. Only residences?  
19 A. Yeah.  
20 Q. Do you know how many papers you deliver  
21 between Monday and Thursday on one night?  
22 A. I think two something or three  
23 something.  
24 Q. Two papers?  
25 A. 200 and something to around 300

[3] (Pages 6 to 9)

[Page 10]

1 M. Acklin  
 2 something.  
 3 Q. Per night?  
 4 A. Yeah.  
 5 Q. Is that different from Fridays to  
 6 Sundays? Does it increase?  
 7 A. Yeah, it goes up.  
 8 Q. What is it on the weekends?  
 9 A. Like around 400 to 400 something.  
 10 Q. That's Fridays through Sundays?  
 11 A. Yeah.  
 12 Q. Do you have any other occupation during  
 13 the daytime?  
 14 A. No.  
 15 Q. That's your sole source of income at the  
 16 current time?  
 17 A. Yeah.  
 18 Q. You were hired, it would be, in or  
 19 around May, June?  
 20 A. Around -- I think around March or April.  
 21 Q. Do you use your own car to perform those  
 22 deliveries?  
 23 A. Yeah.  
 24 Q. Where did you work before PCF?  
 25 A. I had unemployment.

[Page 11]

1 M. Acklin  
 2 Q. What's that?  
 3 A. Unemployment before that.  
 4 Q. How long were you receiving  
 5 unemployment?  
 6 A. For a year.  
 7 Q. Was that from New York State or  
 8 Connecticut?  
 9 A. New York State.  
 10 Q. Are you a Connecticut resident?  
 11 A. Yes.  
 12 Q. How long have you been a Connecticut  
 13 resident?  
 14 A. For a year and a half.  
 15 Q. Where did you reside before Connecticut?  
 16 A. Mount Kisco, New York.  
 17 Q. When were you in Mount Kisco, New York?  
 18 A. I think like a year and a half before I  
 19 went to Connecticut.  
 20 Q. Do you remember the address?  
 21 A. Yeah, 33 Oakridge Road.  
 22 Q. Is that an apartment or a residence?  
 23 A. It's apartment. It's on the left side.  
 24 Q. Where did you reside before Mount Kisco?  
 25 A. The Bronx, New York.

[Page 12]

1 M. Acklin  
 2 Q. How long were you there?  
 3 A. I think two years.  
 4 Q. Do you remember the address of that  
 5 residence?  
 6 A. Yeah, Seymour avenue.  
 7 Q. Do you remember the number?  
 8 A. 3236.  
 9 Q. Is there an apartment number?  
 10 A. The second floor.  
 11 Q. What's your date of birth?  
 12 A. 10/23/89.  
 13 Q. Can you describe your educational  
 14 background?  
 15 A. I graduated from high school.  
 16 Q. When?  
 17 A. 2007.  
 18 Q. What high school?  
 19 A. Saunders, S-A-U-N-D-E-R-S, High School.  
 20 Q. Where is that?  
 21 A. Palmer Road, Yonkers, New York.  
 22 Q. Are you currently married?  
 23 A. No.  
 24 Q. Do you have any children?  
 25 A. No.

[Page 13]

1 M. Acklin  
 2 Q. Do you have any relationship to  
 3 Cecilia Jackson?  
 4 A. Yes.  
 5 Q. What is she to you?  
 6 A. My mother.  
 7 Q. Do you have any relationship to  
 8 Teresa Jackson?  
 9 A. Yes. That's my aunt.  
 10 Q. Do you currently reside with either  
 11 Cecilia or Teresa?  
 12 A. Yeah, with my -- with Teresa.  
 13 Q. With Teresa?  
 14 A. Yeah.  
 15 Q. Have you ever been deposed before?  
 16 A. What?  
 17 Q. Have you ever been deposed before?  
 18 Have you ever sat in a room like this --  
 19 A. No.  
 20 Q. -- and had questions asked?  
 21 Have you ever been involved in a lawsuit  
 22 before this --  
 23 A. No.  
 24 Q. -- action?  
 25 I'm now showing you a document that's

[4] (Pages 10 to 13)

[Page 14]

1 M. Acklin  
 2 previously been marked for identification as  
 3 Defendant's Exhibit 13 on September 20, 2013,  
 4 and I'm going to ask if you've ever seen that  
 5 document before today (handing).  
 6 Take your time.  
 7 A. Yeah.  
 8 Q. You have seen it?  
 9 A. (Witness nods head.)  
 10 Q. Do you remember when you saw it?  
 11 A. No.  
 12 MR. ANDREWS: I'm sorry. You  
 13 said yes, you have seen it?  
 14 THE WITNESS: Yeah.  
 15 Q. Do you see that your name appears in the  
 16 caption on the first page?  
 17 A. Yeah.  
 18 Q. Do you understand that you're a  
 19 plaintiff in an action?  
 20 A. Yeah.  
 21 Q. Can you describe the nature of the  
 22 claims you're asserting against the defendants  
 23 in this action?  
 24 A. I worked over forty hours a week.  
 25 Q. Anything else?

[Page 15]

1 M. Acklin  
 2 A. I helped bag the food.  
 3 Q. Anything else?  
 4 A. That's it.  
 5 (Whereupon, Notice of EBT was  
 6 marked as Defendant's Exhibit 41, for  
 7 identification, as of this date.)  
 8 Q. I'm now showing you a document that's  
 9 been marked for identification as  
 10 Defendant's Exhibit 41 (handing).  
 11 I'm going to ask if you've ever seen  
 12 that document before today.  
 13 A. No.  
 14 Q. Looking back at Defendant's Exhibit 13,  
 15 what do you understand that document to be  
 16 (handing)?  
 17 A. I don't understand it.  
 18 Q. What?  
 19 A. I don't understand it.  
 20 Q. Have you provided any documents to your  
 21 attorneys concerning your claims in this  
 22 action?  
 23 A. Yes.  
 24 Q. I'm now showing you a document that's  
 25 been previously marked for identification as

[Page 16]

1 M. Acklin  
 2 Defendant's Exhibit 4 on September 17, 2013  
 3 (handing).  
 4 I'm going to ask you to take a look at  
 5 that document, and let me know if you've ever  
 6 seen that before today.  
 7 A. No.  
 8 Q. Now I'm going to show you a document  
 9 that's been previously marked for  
 10 identification as Defendant's Exhibit 5 on  
 11 September 17, 2013 (handing).  
 12 I'm going to ask the same question, if  
 13 you've ever seen that document before today.  
 14 You can flip through it if you need to.  
 15 A. No.  
 16 MR. ANDREWS: Do you want to  
 17 take a few minutes?  
 18 A. I don't remember.  
 19 Q. You don't remember if you've ever seen  
 20 it before today --  
 21 A. No.  
 22 Q. -- or have you not seen it before today?  
 23 MR. ANDREWS: Objection.  
 24 A. I don't remember if I saw both these  
 25 (indicating).

[Page 17]

1 M. Acklin  
 2 Q. You don't remember if you saw either  
 3 Defendant's Exhibit 4 or 5?  
 4 A. Yeah.  
 5 (Whereupon, Verification was  
 6 marked as Defendant's Exhibit 42, for  
 7 identification, as of this date.)  
 8 Q. I'm going to show you what's just been  
 9 marked as Defendant's Exhibit 42, and I'm going  
 10 to ask if you've ever seen that document before  
 11 today (handing).  
 12 A. Yeah.  
 13 Q. Is that your signature on the document?  
 14 A. Yeah.  
 15 Q. Did you sign it on or about  
 16 April 1, 2013?  
 17 A. Yes.  
 18 Q. Do you see where it says, "I have read  
 19 the plaintiff's responses to Defendant's first  
 20 set of interrogatories and Plaintiff's  
 21 responses to Defendant's first set of document  
 22 requests and know the contents thereof"?  
 23 A. Yes.  
 24 Q. Do you recall what you saw before you  
 25 signed this document?

[5] (Pages 14 to 17)

[Page 18]

1 M. Acklin  
2 A. No.  
3 Q. Do you recall seeing Plaintiff's  
4 responses to Defendant's first set of  
5 interrogatories?  
6 A. I don't remember.  
7 Q. Do you recall seeing Plaintiff's  
8 responses to Defendant's first set of document  
9 requests?  
10 A. I don't remember.  
11 Q. Are you aware of the company  
12 Late Night Express Courier Services, Inc.?  
13 MR. ANDREWS: Objection.  
14 A. Yes.  
15 Q. If I refer to them as Late Night for the  
16 remainder of the deposition, will you know what  
17 I'm referring to?  
18 MR. ANDREWS: Objection.  
19 A. No.  
20 Q. What do you know Late Night Express  
21 Courier Services, Inc. to be?  
22 MR. ANDREWS: Objection.  
23 A. I think it was the name that was on my  
24 check.  
25 Q. What checks are you referring to?

[Page 19]

1 M. Acklin  
2 A. The checks I was getting from  
3 Fresh Diet.  
4 Q. Is it your claim in this action that you  
5 performed work for The Fresh Diet?  
6 A. Excuse me?  
7 Q. Is it your claim in this action that you  
8 performed work for The Fresh Diet?  
9 A. Yes.  
10 Q. When did you perform work for  
11 The Fresh Diet?  
12 A. From around -- I think it was 2007 or  
13 2008 to 2011.  
14 Q. Do you remember when in 2011 you stopped  
15 performing work?  
16 A. I think it was September or October.  
17 Q. How did you learn of the position with  
18 The Fresh Diet?  
19 A. I learned because my aunt used to work  
20 there before me.  
21 Q. Is that Ms. Teresa Jackson?  
22 A. Yes.  
23 Q. She worked there before you started  
24 working there?  
25 A. Yeah.

[Page 20]

1 M. Acklin  
2 Q. What did you do for The Fresh Diet?  
3 MR. ANDREWS: Objection.  
4 A. I delivered food. I helped pack the  
5 food. Then in the summer -- no. In 2011, I  
6 switched to the kitchen, and then I packed food  
7 in the kitchen.  
8 Q. Do you remember when in 2011 you  
9 switched?  
10 MR. ANDREWS: Objection.  
11 A. I think it was -- I think it was around  
12 March.  
13 Q. What did you do when you worked in the  
14 kitchen?  
15 A. Put foods in the trays, pack food in  
16 trays.  
17 Q. What would you do with the food?  
18 A. We would wrap it in plastic and put it  
19 in the heater, in the heat rocks.  
20 Q. Then what?  
21 A. And that's it.  
22 Q. What hours were you working when you  
23 were performing work in the kitchen?  
24 A. Forty hours a week and sometimes  
25 overtime.

[Page 21]

1 M. Acklin  
2 Q. What days of the week were you working?  
3 A. I worked -- I think it was six days a  
4 week.  
5 Q. Do you remember what days?  
6 A. No. Sometimes I get one -- one or  
7 two days off.  
8 Q. Do you remember the hours that you were  
9 working?  
10 A. No.  
11 Q. Was it during the daytime?  
12 A. Yeah, from the daytime to the nighttime.  
13 Q. Was it before noon that you would show  
14 up?  
15 A. I think it was around 4:00.  
16 Q. 4:00 p.m.?  
17 A. Yeah, 3:00 or 4:00.  
18 Q. Then when would you be finished?  
19 A. Around 12:00. Around 12:00 to around --  
20 from around 12:00 to 3:00.  
21 Q. 12:00 a.m. to 3:00 a.m.?  
22 A. Yeah, and -- yeah, sometimes overtime.  
23 Q. When you were performing work in the  
24 kitchen, were you also delivering meals?  
25 A. No.

[6] (Pages 18 to 21)



[Page 22]

1 M. Acklin  
 2 Q. There came a time that you switched from  
 3 delivering meals to exclusively working in the  
 4 kitchen?  
 5 A. Yes.  
 6 Q. That was in or about March 2011?  
 7 A. Yes.  
 8 Q. How were you paid when you were working  
 9 in the kitchen?  
 10 A. In the kitchen, I think I got paid 8.50  
 11 an hour.  
 12 Q. Do you know where your checks came from,  
 13 who issued them?  
 14 A. From The Fresh Diet.  
 15 MR. ANDREWS: Can you give me  
 16 personal break for two minutes?  
 17 MR. POLLACK: Yes.  
 18 MR. ANDREWS: Thank you.  
 19 (Whereupon, a recess was taken  
 20 at this time.)  
 21 Q. Where was the kitchen located when you  
 22 were working in the kitchen in or about  
 23 March 2011?  
 24 A. In Brooklyn.  
 25 Q. Do you remember the street address?

[Page 23]

1 M. Acklin  
 2 A. I forgot the address.  
 3 Q. Do you know if it was Baltic or Siegel?  
 4 A. Yeah, it was -- I think -- the first  
 5 one, I think, was Siegel, and the other one was  
 6 near Baltic.  
 7 Q. Did you work in two kitchens or just one  
 8 kitchen?  
 9 A. One kitchen, and then we moved to -- to  
 10 the one at Baltic. I worked in the back in the  
 11 warehouse.  
 12 Q. Did you ever work in the kitchen in  
 13 Baltic?  
 14 A. No.  
 15 Q. Do you know when the location moved from  
 16 Siegel to Baltic?  
 17 A. I don't remember.  
 18 Q. Do you know if it was between March 2011  
 19 and September or October 2011?  
 20 A. I think it was around like the  
 21 summertime.  
 22 Q. Of 2011?  
 23 A. Yeah.  
 24 MR. ANDREWS: Objection.  
 25 Q. Is it fair to say from about March 2011

[Page 24]

1 M. Acklin  
 2 to the summertime of 2011 you were working in  
 3 the kitchen in Siegel Street for The Fresh  
 4 Diet?  
 5 MR. ANDREWS: Objection.  
 6 A. Can you repeat that?  
 7 Q. Is it fair to say that from about  
 8 March 2011 until the summertime of 2011,  
 9 whenever --  
 10 A. Yeah.  
 11 Q. -- the location moved, that you worked  
 12 in the kitchen for The Fresh Diet?  
 13 A. Yeah.  
 14 Q. After the move to Baltic until you ended  
 15 your employment with The Fresh Diet in or about  
 16 September or October 2011, you said you worked  
 17 in the warehouse?  
 18 A. Yeah.  
 19 Q. What were you doing in the warehouse?  
 20 A. Packing bags, like putting ice in bags  
 21 and bringing it to the packers.  
 22 Q. Bringing it to packers?  
 23 A. Yeah.  
 24 Q. What do the packers do?  
 25 A. They pack the food, put the food in the

[Page 25]

1 M. Acklin  
 2 bags.  
 3 Q. Do you know what would happen to the  
 4 food after the packers put it in the bags?  
 5 MR. ANDREWS: Objection.  
 6 A. Then the delivery drivers deliver --  
 7 deliver the bags, pick the bags up.  
 8 Q. Was it put in a certain area for the  
 9 delivery drivers to pick it up?  
 10 MR. ANDREWS: Objection.  
 11 A. I don't know. I didn't stay that long  
 12 for that part.  
 13 Q. How did your employment end? Why did it  
 14 cease in or about September or October 2011?  
 15 A. I moved -- because I moved to  
 16 Mount Kisco, and the train cost too much.  
 17 Q. You resigned?  
 18 A. Yeah.  
 19 Q. After you resigned, you filed for  
 20 unemployment?  
 21 A. Yes.  
 22 MR. ANDREWS: Objection.  
 23 Q. Was there any type of hearing for the  
 24 unemployment?  
 25 A. I don't remember.

[7] (Pages 22 to 25)

[Page 26]

1 M. Acklin  
 2 Q. You did start receiving benefits at some  
 3 point?  
 4 A. Yeah.  
 5 Q. Do you remember how much it was?  
 6 A. I don't remember.  
 7 Q. When you were working for The Fresh  
 8 Diet, there were basically three functions that  
 9 you held between 2007 and 2011; is that  
 10 correct?  
 11 A. Yes.  
 12 Q. As delivery driver at one point, then in  
 13 the kitchen, and then in the warehouse?  
 14 A. Yes.  
 15 Q. You were a delivery driver from about  
 16 2007/2008 until March of 2011, correct?  
 17 A. Yes.  
 18 Q. Do you remember when you started being a  
 19 food delivery driver? Was it like late 2007,  
 20 early 2008? Do you remember a month?  
 21 A. I think it was late 2007, early 2008.  
 22 Q. Your aunt had been a driver for some  
 23 period before that and told you about the  
 24 position?  
 25 A. Yes.

[Page 27]

1 M. Acklin  
 2 Q. What did you do before you started being  
 3 a food delivery driver?  
 4 How did you obtain the position? Did  
 5 you meet with anyone?  
 6 A. Yeah. I met the manager.  
 7 Q. Who is that?  
 8 A. Syed.  
 9 Q. Where did you meet him?  
 10 A. When the kitchen was in New Jersey.  
 11 Q. Was there a name of the kitchen in  
 12 New Jersey?  
 13 A. I don't know.  
 14 Q. Do you know if it was a restaurant?  
 15 A. I think it was at a catering place.  
 16 Q. Did you sign any type of agreement when  
 17 you started performing work for The Fresh Diet  
 18 as a delivery driver?  
 19 A. I had to fill out an application. I  
 20 don't remember what it was.  
 21 Q. I'm now showing you a document that's  
 22 previously been marked for identification as  
 23 Defendant's Exhibit 18 on September 20, 2013,  
 24 and I'm going to ask if you've ever seen a  
 25 document similar to that one (handing).

[Page 28]

1 M. Acklin  
 2 MR. ANDREWS: Objection.  
 3 A. No.  
 4 Q. No, you have not seen a document, or no,  
 5 you don't remember?  
 6 A. No, I haven't seen that.  
 7 Q. Do you remember ever signing an  
 8 independent contractor agreement?  
 9 MR. ANDREWS: Objection.  
 10 A. No.  
 11 Q. No, you don't remember or no, you never  
 12 did?  
 13 A. No, I don't remember.  
 14 (Whereupon, Class action  
 15 affidavit was marked as Defendant's  
 16 Exhibit 43, for identification, as of  
 17 this date.)  
 18 Q. I'm now showing you what's been marked  
 19 for identification as Defendant's Exhibit 43,  
 20 and I'm going to ask if you've ever seen this  
 21 document before today (handing).  
 22 MR. ANDREWS: Look at all the  
 23 pages.  
 24 A. Yes.  
 25 Q. Do you know what that document is?

[Page 29]

1 M. Acklin  
 2 A. No.  
 3 Q. Is that your signature on the third page  
 4 of the document?  
 5 A. Yes.  
 6 Q. Did you sign it on January 25, 2013?  
 7 A. Yes.  
 8 Q. Do you see above your signature that it  
 9 says, "I declare under perjury that the  
 10 forgoing is true and correct"?  
 11 A. Yes.  
 12 Q. Did you know what that meant before you  
 13 signed it?  
 14 MR. ANDREWS: Objection.  
 15 A. No.  
 16 Q. Did you read this document before you  
 17 signed it?  
 18 A. Yes.  
 19 Q. Do you see in the first paragraph that  
 20 it says, "I am a Connecticut resident and a  
 21 former driver/food delivery employee for the  
 22 defendants"?  
 23 A. Yes.  
 24 Q. Do you know what defendants you're  
 25 referring to in that paragraph?

[8] (Pages 26 to 29)



[Page 30]

1 M. Acklin  
 2 MR. ANDREWS: Objection.  
 3 A. Yes.  
 4 Q. Who is that?  
 5 A. The Fresh Diet.  
 6 Q. Looking at the third paragraph of that  
 7 document, do you see where it says, "My job  
 8 responsibilities as a driver/food delivery  
 9 employee for the defendants consisted  
 10 exclusively of showing up at The Fresh Diet's  
 11 Brooklyn facilities, receiving instructions as  
 12 to my delivery routes, obtaining prepared  
 13 meals, and personally delivering them to The  
 14 Fresh Diet's customers"?  
 15 A. Yes.  
 16 Q. When you say that it consisted of  
 17 exclusively showing up at The Fresh Diet's  
 18 Brooklyn facilities, what facilities were you  
 19 referring to?  
 20 A. The kitchen at Siegel Street and the one  
 21 by Baltic.  
 22 Q. You never delivered meals for The Fresh  
 23 Diet when they were at Baltic Street, correct?  
 24 MR. ANDREWS: Objection.  
 25 A. Yeah, I delivered meals. No. No, not

[Page 31]

1 M. Acklin  
 2 at Baltic Street.  
 3 Q. The only Brooklyn facility where you  
 4 delivered meals out of was at Siegel Street?  
 5 A. Yeah. I did deliver at Baltic, I think,  
 6 like two times, two or three times.  
 7 Q. Otherwise, you were just working in the  
 8 warehouse?  
 9 A. Yeah.  
 10 MR. ANDREWS: Objection.  
 11 Q. Were there any other facilities besides  
 12 the Brooklyn facilities?  
 13 A. Yes.  
 14 Q. Where were those?  
 15 A. Connecticut and New Jersey.  
 16 Q. You say when you started it was located  
 17 in New Jersey, correct?  
 18 A. Yes.  
 19 Q. You don't recall the name of the, I  
 20 think you said, catering hall?  
 21 A. I don't remember the name, but I think  
 22 it was a catering place.  
 23 Q. Do you remember where that was, what  
 24 city it was located in New Jersey?  
 25 A. I forgot the name.

[Page 32]

1 M. Acklin  
 2 Q. Where were you living at the time that  
 3 you started performing work from the New Jersey  
 4 location?  
 5 A. In Yonkers. Then I moved to the Bronx.  
 6 Q. You were in Yonkers at the time that you  
 7 started performing --  
 8 A. Yeah.  
 9 Q. -- food deliveries?  
 10 A. (Witness nods head.)  
 11 Q. What was the address in Yonkers?  
 12 A. I forgot the name of the street.  
 13 Q. Do you know if it was an apartment  
 14 complex?  
 15 A. Yeah, it was an apartment.  
 16 Q. This was the place you lived before  
 17 Seymour Avenue?  
 18 A. Yes.  
 19 Q. Did you live with anyone there?  
 20 A. With my mother.  
 21 Q. Cecilia?  
 22 A. Yes.  
 23 Q. When it was located in New Jersey, what,  
 24 generally, were the duties that you would  
 25 perform in order to provide food deliveries?

[Page 33]

1 M. Acklin  
 2 A. We used to put the food in the bags, put  
 3 the ice in the bags, and put the bag ties on,  
 4 and then we put it in our cars and deliver it.  
 5 Q. This was when it was in the New Jersey  
 6 location we're talking about?  
 7 A. Yes.  
 8 Q. What time would you arrive to the  
 9 New Jersey location?  
 10 MR. ANDREWS: Objection.  
 11 A. I think it was around -- around 3:00 to  
 12 around 6:00.  
 13 Q. Between 3:00 p.m. and 6:00 p.m.?  
 14 A. Yeah.  
 15 Q. What would make you show up at 3:00 p.m.  
 16 as opposed to 6:00 p.m. on any given day?  
 17 A. Sometimes the food wasn't done early.  
 18 Q. If that was the case, you would arrive  
 19 later?  
 20 A. Yeah. He would tell me if the food was  
 21 not going to be done early.  
 22 Q. Who is "he"?  
 23 A. Syed.  
 24 Q. How would he tell you that?  
 25 A. Call.

[9] (Pages 30 to 33)

[Page 34]

1 M. Acklin  
 2 Q. You called him, or he called you?  
 3 A. He called me.  
 4 Q. If you arrived at 3:00 p.m., what would  
 5 you do upon arrival?  
 6 A. Empty the ice out, return the old bags,  
 7 and then pack the food and the ice and deliver  
 8 the new bags.  
 9 Q. You would have old bags from the  
 10 previous night?  
 11 A. Yeah.  
 12 Q. When would you start delivering food?  
 13 A. After I finished packing all the bags.  
 14 Q. What time about?  
 15 MR. ANDREWS: Objection.  
 16 A. I don't remember.  
 17 Q. Did you have a certain route that was  
 18 designated to you at that time?  
 19 A. When we was in New Jersey?  
 20 Q. Yes.  
 21 A. Yeah.  
 22 Q. What was your route?  
 23 A. It was New Jersey and New York.  
 24 Q. Where in New Jersey?  
 25 A. I don't remember.

[Page 35]

1 M. Acklin  
 2 Q. Where in New York?  
 3 A. Brooklyn and Staten Island.  
 4 Q. Do you remember how many meals you would  
 5 driver in a night?  
 6 A. Like twenty something, thirty.  
 7 Sometimes it was ten like on Fridays.  
 8 Q. Fridays it was ten?  
 9 MR. ANDREWS: Objection.  
 10 A. Sometimes.  
 11 Q. Sometimes?  
 12 A. (Witness nods head.)  
 13 Q. Do you remember what nights you were  
 14 working when it was in the New Jersey location?  
 15 A. Out of the whole week, we got one day  
 16 off. We get one day off.  
 17 Q. You were working Tuesdays through  
 18 Sundays?  
 19 MR. ANDREWS: Objection.  
 20 A. Mondays and -- Mondays until -- Monday,  
 21 the whole week, and we was off, I think, on  
 22 Sundays.  
 23 Q. The number of stops varied night to  
 24 night?  
 25 MR. ANDREWS: Objection.

[Page 36]

1 M. Acklin  
 2 A. Yeah, but it was usually the same thing.  
 3 Q. Do you remember how many it usually was?  
 4 A. I think around -- like around fifteen to  
 5 twenty-five.  
 6 Q. Do you remember how you were paid at  
 7 that time?  
 8 A. I think it was \$0.53 a mile.  
 9 Q. Anything per stop?  
 10 A. A dollar for each stop.  
 11 Q. What was the earliest you would be done  
 12 performing deliveries when it was in the  
 13 New Jersey location?  
 14 MR. ANDREWS: Objection.  
 15 A. I think around -- around 3:00.  
 16 Q. 3:00 a.m.?  
 17 A. Yeah.  
 18 Q. What would be the latest you would be  
 19 done?  
 20 A. 6:00.  
 21 Q. 6:00 a.m.?  
 22 A. (Witness nods head.)  
 23 Q. Just to be clear, you'd start delivering  
 24 on the evening of one night and end the morning  
 25 of the next day?

[Page 37]

1 M. Acklin  
 2 A. Yeah.  
 3 Q. When The Fresh Diet was in the New  
 4 Jersey location, you were performing deliveries  
 5 only in New Jersey and New York?  
 6 A. Yeah.  
 7 Q. Would you travel between New Jersey and  
 8 New York on the same night?  
 9 A. Sometimes on the same night, sometimes  
 10 like in the morning.  
 11 Q. Sometimes it was only in New Jersey?  
 12 A. Wait. Can you repeat that?  
 13 Q. When you were given a route --  
 14 A. Yeah.  
 15 Q. -- was it always in New Jersey and  
 16 New York --  
 17 A. Yeah.  
 18 Q. -- on the same night?  
 19 A. Yeah, on the same night.  
 20 Q. You may start the deliveries in  
 21 New Jersey and end in New York?  
 22 A. Yeah.  
 23 Q. When you were done, what would you do?  
 24 MR. ANDREWS: Objection.  
 25 A. Go home.

[10] (Pages 34 to 37)

[Page 38]

1 M. Acklin  
2 Q. Did you call anyone?  
3 Did you call Syed after you were done  
4 performing deliveries?  
5 A. Sometimes.  
6 Q. When would you call him?  
7 What would cause you to call him --  
8 MR. ANDREWS: Objection.  
9 Q. -- sometimes but not all times?  
10 A. Sometimes he told us to call him when we  
11 finished.  
12 Q. You didn't always call him?  
13 A. No.  
14 Q. You said the, I think, facility moved to  
15 Connecticut at some point; is that correct?  
16 A. Yeah.  
17 Q. Do you remember where in Connecticut?  
18 A. In Stamford.  
19 Q. Stamford?  
20 A. Yeah.  
21 Q. Do you remember when that was?  
22 A. I don't remember.  
23 Q. Did your duties change when it moved  
24 from New Jersey to Stamford?  
25 A. Yeah.

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1 M. Acklin  
2 Q. How?  
3 A. I had to deliver like bags for Philly  
4 drivers, so I had to bring extra bags.  
5 Q. You had more stops?  
6 A. No. I just had to meet the drivers in  
7 New Jersey. Then I had to deliver out.  
8 Q. Who coordinated that?  
9 A. I don't remember.  
10 Q. Did Syed coordinate that?  
11 A. Yeah.  
12 Q. How would he tell you to get bags from  
13 Philly drivers?  
14 MR. ANDREWS: Objection.  
15 A. I used to have to deliver their bags to  
16 them in New Jersey, and then they gave me their  
17 old bags.  
18 MR. ANDREWS: My objection is to  
19 I believe he testified that he delivered  
20 bags for Philadelphia drivers, not from.  
21 That's what I thought I heard.  
22 Whatever your answer was it was.  
23 Q. Did you deliver for Philadelphia  
24 drivers?  
25 A. No. I delivered their bags to them, and

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1 M. Acklin  
2 they met me in New Jersey.  
3 Q. Do you remember where in New Jersey?  
4 A. I think it was Princeton.  
5 Q. Did you have a different route when it  
6 was in the Connecticut facility compared to  
7 when it was in the New Jersey facility?  
8 A. No, still New Jersey and New York.  
9 Q. Did the amount of stops change?  
10 A. No.  
11 Q. About fifteen to twenty-five?  
12 MR. ANDREWS: Objection.  
13 A. Yeah, to like around thirty.  
14 Q. When would you arrive at the Stamford  
15 location?  
16 A. Like same time, around 3:00 to 6:00.  
17 2:30 -- like 2:00 to around 6:00.  
18 Q. Do you remember when you would start  
19 performing food deliveries?  
20 MR. ANDREWS: Objection.  
21 A. I left soon as I finished packing all  
22 the food.  
23 Q. From about 2:00, maybe as late as 6:00,  
24 is when you would start packing food?  
25 A. From around 2:00 to 6:00 is when I

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1 M. Acklin  
2 started packing food and leaving to deliver  
3 food, but -- yeah.  
4 Q. What would you do to pack the food?  
5 A. Put it in bags, put ice in the bags,  
6 then put it in the car.  
7 Q. The meal was already cooked?  
8 A. Yeah.  
9 Q. Would you put the ice at the bottom of  
10 the bag?  
11 A. Yeah. Sometimes though at the top of  
12 the bag.  
13 Q. How many meals would go in a bag?  
14 A. It was breakfast, lunch, and dinner.  
15 Q. Three meals?  
16 A. Yeah, or sometimes six meals in a big  
17 bag sometimes.  
18 Q. How long would it take to pack one bag?  
19 MR. ANDREWS: Objection.  
20 A. I don't remember.  
21 Q. More than five minutes?  
22 MR. ANDREWS: Objection.  
23 A. No.  
24 Q. Less than five minutes?  
25 MR. ANDREWS: Objection.

[11] (Pages 38 to 41)

[Page 42]

1 M. Acklin  
 2 A. Yeah, less than five minutes.  
 3 Q. Less than three minutes?  
 4 MR. ANDREWS: Objection.  
 5 A. Yes.  
 6 Q. Less than two minutes?  
 7 MR. ANDREWS: Objection.  
 8 A. I don't remember.  
 9 Q. Do you remember how many bags you would  
 10 pack?  
 11 A. From around fifteen to thirty.  
 12 Q. Did the way you were compensated change  
 13 when the facility moved from New Jersey to  
 14 Connecticut?  
 15 A. No.  
 16 Q. Still \$0.53 per mile and \$1 per stop?  
 17 A. Yeah.  
 18 Q. How would anyone know how many miles or  
 19 stops you made in a given night?  
 20 A. They -- they put it through the --  
 21 through the computer. They put it on the  
 22 paper, and they give you the route, and you  
 23 could record the miles in your car.  
 24 Q. Where would your first stop be when you  
 25 were performing deliveries from the New Jersey

[Page 43]

1 M. Acklin  
 2 location?  
 3 A. In New Jersey.  
 4 Q. Do you remember how many stops there  
 5 would be in New Jersey?  
 6 A. I don't remember.  
 7 Q. Were they close to one another, or were  
 8 they far?  
 9 MR. ANDREWS: Objection.  
 10 A. Some were close, some were far.  
 11 Q. Were some located in the same city?  
 12 A. Sometimes, but usually it was different  
 13 cities.  
 14 Q. Did you ever change the route that you  
 15 drove when you were performing deliveries from  
 16 New Jersey?  
 17 A. No.  
 18 Q. What about from Connecticut?  
 19 A. No.  
 20 Q. You always delivered in the same exact  
 21 order?  
 22 A. Yeah.  
 23 Q. Sometime before March 2011, the facility  
 24 moved from Connecticut to Brooklyn; is that  
 25 true?

[Page 44]

1 M. Acklin  
 2 A. Yeah.  
 3 Q. To Siegel Street in Brooklyn?  
 4 A. Yeah.  
 5 Q. Do you remember when that was?  
 6 A. No.  
 7 Q. Do you remember, when you were  
 8 performing deliveries from the Connecticut  
 9 location, what the earliest time you would be  
 10 done making your last delivery was?  
 11 A. I think around 4:00.  
 12 Q. 4:00 a.m.?  
 13 A. Yeah.  
 14 Q. What about the latest time you would be  
 15 done making your last delivery?  
 16 A. 6:00.  
 17 Q. A.m.?  
 18 A. (Witness nods head.)  
 19 Q. You just have to verbally answer.  
 20 A. Yes.  
 21 Q. When it moved to the Siegel Street  
 22 location, did your duties change?  
 23 A. When we was at Siegel, that's when I  
 24 went -- moved to the kitchen, like around  
 25 March.

[Page 45]

1 M. Acklin  
 2 Q. You never performed meal deliveries when  
 3 it was at Siegel Street?  
 4 MR. ANDREWS: Objection.  
 5 A. Yeah.  
 6 Q. Yes, you didn't?  
 7 A. Yeah, I did.  
 8 Q. You did?  
 9 A. (Witness nods head.)  
 10 Q. For how long?  
 11 A. Until around March.  
 12 Q. Do you know how many months you  
 13 performed deliveries when it was at the  
 14 Siegel Street location?  
 15 A. I don't remember.  
 16 Q. Do you remember if it was more than a  
 17 month?  
 18 A. Yeah.  
 19 Q. More than two months?  
 20 A. Yeah.  
 21 Q. More than three months?  
 22 A. Yeah.  
 23 Q. More than four months?  
 24 A. Yeah.  
 25 Q. More than five months?

[12] (Pages 42 to 45)

[Page 46]

1 M. Acklin  
2 A. Yeah.  
3 Q. More than six months?  
4 A. I think so.  
5 Q. More than seven months?  
6 A. I don't remember.  
7 MR. ANDREWS: It's noon. Could  
8 we take a five-minute break at your  
9 convenience when it's a good place to do  
10 so?  
11 MR. POLLACK: Of course.  
12 Q. Did your route change when you were  
13 performing meal deliveries from the  
14 Siegel Street location?  
15 MR. ANDREWS: Objection.  
16 A. Did my route change from the Siegel --  
17 Q. From the time you were performing  
18 deliveries in Connecticut to the time you  
19 performed deliveries from Siegel Street, did  
20 your route change?  
21 A. Yeah.  
22 Q. You had a different route when it was at  
23 the Siegel Street location?  
24 A. Yeah.  
25 Q. What was that route?

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1 M. Acklin  
2 A. Connecticut and New York.  
3 Q. Connecticut and New York?  
4 A. Yeah.  
5 Q. Where in Connecticut?  
6 A. From Greenwich to next to Hartford.  
7 Q. What about in New York?  
8 A. From around Carmel, New York to around  
9 across the Tappan Zee Bridge sometimes.  
10 Q. Did you ever perform deliveries in the  
11 city, New York City?  
12 A. Yeah, sometimes.  
13 Q. What boroughs?  
14 A. Manhattan and Brooklyn and Staten  
15 Island.  
16 Q. How many stops per night were you  
17 making?  
18 MR. ANDREWS: Objection.  
19 A. From around fifteen to thirty-five.  
20 Q. What time would you show up to the  
21 Siegel Street location to perform meal  
22 deliveries?  
23 A. From around 3:00 to 6:00.  
24 Q. What would you do when you arrived at  
25 the Siegel Street location?

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1 M. Acklin  
2 A. I picked up the bags. Sometimes I  
3 helped them pack, but usually I picked up the  
4 bags, put them in my car.  
5 Q. Would you start making deliveries as  
6 early as 3:00 p.m.?  
7 A. No.  
8 Q. When was --  
9 A. Yeah, like sometimes like I would leave  
10 about 3:00 something or around 6:00, sometimes  
11 8:00.  
12 Q. The food was sometimes ready by  
13 3:00 p.m.?  
14 A. Yeah. Sometimes around 6:00, sometimes  
15 8:00, later.  
16 Q. Sometimes later than 8:00?  
17 A. Yeah.  
18 Usually, it was around -- they finished  
19 around -- I think around 4:00 to 6:00.  
20 Q. How would you know when to show up?  
21 A. Sometimes -- sometimes -- sometimes he  
22 tell us, or sometimes we just show up around a  
23 certain time he give us.  
24 Q. Were you expected to show up at a  
25 certain time when it was at the Brooklyn

[Page 49]

1 M. Acklin  
2 facility?  
3 A. Yeah. Yeah, usually around 3:00.  
4 Q. You were expected to show up at 3:00?  
5 A. Yeah.  
6 Q. Who expected you to show up at  
7 3:00 p.m.?  
8 A. Syed.  
9 Q. When did he tell you to show up at  
10 3:00 p.m.?  
11 MR. ANDREWS: Objection.  
12 A. I don't remember.  
13 Q. Sometimes you wouldn't show up until  
14 8:00 p.m.; is that correct?  
15 MR. ANDREWS: Objection.  
16 That's not what he said.  
17 A. No. No. Usually, it would be around  
18 3:00 or 4:00 I would show up.  
19 Q. What would you do between 3:00 and 4:00  
20 until the time you made your first delivery?  
21 A. Put the bags in the car. Some days, we  
22 helped them bag it and then put the bags in the  
23 car. Sometimes we had to wait for the food to  
24 be done.  
25 MR. ANDREWS: I need a break.

[13] (Pages 46 to 49)



[Page 50]

1 M. Acklin  
2 We should take a break for five minutes.  
3 MR. POLLACK: Okay.  
4 (Whereupon, a recess was taken  
5 at this time.)  
6 Q. Turning back to the document marked as  
7 Defendant's Exhibit 43, again, looking at  
8 paragraph three on the second page, in that  
9 first sentence it says that you received  
10 instructions as to your delivery routes.  
11 Do you see that?  
12 A. Yes.  
13 Q. What instructions did you receive  
14 regarding your delivery routes?  
15 A. Certain customers wanted it in different  
16 places of their house.  
17 Q. Was it an instruction from the customer?  
18 MR. ANDREWS: Objection.  
19 A. Yeah, and Syed.  
20 Q. How would you know if a customer wanted  
21 it delivered at a certain part of the house?  
22 A. It would be on a paper, or sometimes  
23 Syed would e-mail us, and he would tell me.  
24 Q. Would that be during the delivery that  
25 you would receive an e-mail from Syed or before

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1 M. Acklin  
2 you started?  
3 A. Before I started.  
4 Q. Other than where the customer may want  
5 the food placed, did you receive any other  
6 instructions?  
7 A. No. We just leave it at the front door.  
8 Q. These are stand-alone residences that  
9 we're talking about?  
10 MR. ANDREWS: Objection.  
11 A. Yeah. Some are houses, some are  
12 buildings.  
13 Q. If you went to a building, where would  
14 you leave the meal?  
15 A. Sometimes in the lobby or at their front  
16 door.  
17 Q. Going on in that paragraph, the last  
18 sentence of paragraph three says, "After  
19 completing my meal deliveries, I would have to  
20 return to the Fresh Diet's Brooklyn facilities  
21 to report back, complete required paperwork,  
22 and return empty bags".  
23 Do you see that sentence?  
24 A. Yes.  
25 Q. When did you have to start reporting

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1 M. Acklin  
2 back to the facility after you were done  
3 performing your deliveries?  
4 A. In -- the next day when I returned to  
5 work.  
6 Q. When you returned to work to deliver  
7 meals the next day?  
8 A. Yeah.  
9 Q. You didn't have to report back at the  
10 end of the deliveries?  
11 A. No, but -- no.  
12 Q. When would you complete required  
13 paperwork?  
14 A. When I was on my route and when I  
15 finished my route.  
16 Q. Did you ever have to hand that in?  
17 A. Yeah, when I came in. Sometimes I would  
18 hand it in when I came in.  
19 Q. The following day?  
20 A. Yeah, sometimes.  
21 Q. What about other times?  
22 A. Sometimes I keep it.  
23 Q. And you didn't hand it in?  
24 A. No.  
25 Q. How would Syed know what to pay if you

[Page 53]

1 M. Acklin  
2 didn't hand it in?  
3 A. I think he already has it on his  
4 computer.  
5 Q. Did your pay vary from week to week?  
6 A. A little bit.  
7 Q. It wasn't always the same amount each  
8 week, is that a fair statement?  
9 A. Yeah.  
10 Q. When you say you sometimes filled out  
11 paperwork when you were doing the delivery or  
12 completed it, what would you be filling out?  
13 A. Well, the times that I got to each stop.  
14 Q. You would put a time?  
15 A. Yeah, and how many bags and ice I got  
16 back.  
17 Q. How many bags you picked up?  
18 A. Yeah, how many bags and ice I picked up.  
19 Q. From that same customer?  
20 A. Yeah.  
21 Q. If a time was entered on the paperwork,  
22 would that be when you arrived or after you  
23 finished the delivery?  
24 A. Sometimes -- both. Sometimes before --  
25 sometimes when I got there -- sometimes as soon

[14] (Pages 50 to 53)



[Page 54]

1 M. Acklin  
2 as I got there, sometimes when I was leaving.  
3 Q. You would fill it out either before or  
4 after you performed that delivery?  
5 A. Yeah.  
6 Q. Did you ever fill it out at the end of  
7 the night?  
8 A. No, at my last stop.  
9 Q. At the last stop?  
10 A. Yeah.  
11 Q. Did you ever get a warning if you didn't  
12 hand in the paperwork the next day?  
13 MR. ANDREWS: Objection.  
14 A. Yeah.  
15 Q. When?  
16 A. A warning for what?  
17 Q. For not handing in the paperwork the  
18 following day.  
19 A. No.  
20 Q. You never got a warning for that?  
21 A. Yeah.  
22 Q. Yes, you never got a warning for that?  
23 A. No.  
24 Q. You were never warned for not handing in  
25 paperwork; is that correct?

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1 M. Acklin  
2 A. Yeah, I was warned.  
3 Q. You were warned?  
4 A. Yeah.  
5 Q. By who?  
6 A. Syed.  
7 Q. When?  
8 A. The next day when I saw him.  
9 Q. Do you remember what he said?  
10 A. No.  
11 Q. Was this on multiple occasions or just  
12 one time?  
13 A. Sometimes.  
14 Q. How many times?  
15 A. I don't remember.  
16 Q. Did you ever not get a route assigned to  
17 you for failing to hand in paperwork?  
18 A. No.  
19 Q. Did you receive warnings for anything  
20 else besides not handing in paperwork?  
21 A. Yeah, for -- warnings for not putting --  
22 make sure I would put bag ties.  
23 Q. Is that before you started performing  
24 deliveries on a night?  
25 A. Yeah.

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1 M. Acklin  
2 Q. How would one know if you put bag ties  
3 on or not?  
4 A. If it wasn't a bag tie, the customer  
5 would complain.  
6 Q. Then what would happen?  
7 A. They would take money out of my check.  
8 Q. How much?  
9 A. I forgot how much it was.  
10 Q. Do you remember that ever happening on a  
11 specific occasion?  
12 A. Yeah.  
13 Q. How many times?  
14 A. I don't remember.  
15 Q. More than five?  
16 MR. ANDREWS: Objection.  
17 A. I think so.  
18 Q. More than ten?  
19 MR. ANDREWS: Objection.  
20 A. I don't remember.  
21 Q. Looking at that document again,  
22 Defendant's 43, paragraph six says, "Throughout  
23 my employment, I often worked significantly in  
24 excess of forty hours a week, yet was never  
25 paid overtime compensation of one and half

[Page 57]

1 M. Acklin  
2 times my regular rate of pay".  
3 Do you see that?  
4 A. Yes.  
5 Q. It says, "I often significantly worked  
6 in excess of forty hours a week".  
7 Do you see that?  
8 A. Yes.  
9 Q. How many hours in excess of forty hours  
10 a week did you work?  
11 MR. ANDREWS: Objection.  
12 A. I think around twenty to thirty.  
13 Q. Twenty to thirty hours in excess of  
14 forty?  
15 A. Yeah.  
16 Q. Sixty to seventy hours per week?  
17 A. Yeah.  
18 Q. Is that every week of the time you  
19 worked for The Fresh Diet?  
20 MR. ANDREWS: Objection.  
21 A. No.  
22 Q. Sometimes it was different?  
23 A. Yeah.  
24 Q. Was it sometimes less than sixty?  
25 A. It was less when I switched to the

[15] (Pages 54 to 57)

[Page 58]

1 M. Acklin  
 2 kitchen.  
 3 Q. Just focusing on the time you were  
 4 performing as a delivery driver --  
 5 A. Yeah.  
 6 Q. -- was it ever less than sixty?  
 7 A. Yeah.  
 8 Q. Was it ever less than fifty?  
 9 MR. ANDREWS: Objection.  
 10 A. No.  
 11 Q. How did you come up with twenty to  
 12 thirty overtime hours per week?  
 13 A. I don't know.  
 14 Q. The next paragraph, paragraph seven,  
 15 says, "During my employment with the  
 16 defendants, I interacted with drivers/food  
 17 delivery employees on a daily basis, know that  
 18 my own experiences were typical of how these  
 19 employees were supervised and compensated".  
 20 Do you see that sentence?  
 21 A. Yes.  
 22 Q. What other drivers are you referring to  
 23 in that paragraph?  
 24 A. My aunt.  
 25 Q. Who?

[Page 59]

1 M. Acklin  
 2 A. My aunt.  
 3 Q. Any others? You can list them all.  
 4 A. I don't remember the rest other than  
 5 Kenneth.  
 6 Q. Kenneth Chow?  
 7 A. Yeah.  
 8 Q. How do you know that your experiences  
 9 were typical of their experiences?  
 10 MR. ANDREWS: Objection.  
 11 A. I don't know.  
 12 Q. Do you know if your duties, tasks, and  
 13 responsibilities were the same as the other  
 14 drivers?  
 15 A. Yes.  
 16 Q. How do you know that?  
 17 A. Because sometimes I did stops for other  
 18 drivers.  
 19 Q. Like who?  
 20 A. I don't remember.  
 21 Q. How would that come about?  
 22 MR. ANDREWS: Objection.  
 23 A. They asked me to do a favor for them.  
 24 Like Syed asked me to do bags like if they left  
 25 a bag or something.

[Page 60]

1 M. Acklin  
 2 Q. Would another driver ever ask you to  
 3 perform stops for them?  
 4 A. No.  
 5 Q. Do you know how other drivers were paid?  
 6 A. We was paid the same.  
 7 Q. \$0.53 per mile?  
 8 A. Yeah, and the Manhattan drivers were  
 9 paid different.  
 10 Q. How were they paid?  
 11 A. I think \$3 or \$5 a stop.  
 12 Q. Did you use your own car when you were  
 13 performing the deliveries?  
 14 A. Yes.  
 15 Q. Did you own that car?  
 16 A. No.  
 17 Q. Did you lease the car?  
 18 A. No.  
 19 Q. Whose car was it?  
 20 A. It's a car that my mother bought for me.  
 21 Q. What kind of car was it?  
 22 A. Nissan Versa and a Toyota Sienna and a  
 23 Volkswagen Passat.  
 24 Q. What car did you have when you started  
 25 performing deliveries from the New Jersey

[Page 61]

1 M. Acklin  
 2 location?  
 3 A. The Nissan Versa.  
 4 Q. What about from the Connecticut  
 5 location?  
 6 A. The Nissan Versa, and then -- and then I  
 7 used a van from the job.  
 8 Q. What about from Brooklyn?  
 9 A. From Brooklyn, I used a company van, and  
 10 then I was using my car.  
 11 Q. Which car?  
 12 A. The Versa, the Sienna, and the Passat.  
 13 Q. You used all three of those cars when  
 14 you were performing deliveries from the  
 15 Brooklyn facility?  
 16 A. Yeah.  
 17 Q. When you say "company van," what do you  
 18 mean?  
 19 A. It was a van that they gave to me to do  
 20 the route.  
 21 Q. How often would you get a van?  
 22 A. When I -- when I started delivering the  
 23 bags to the Philly drivers, to Princeton,  
 24 New Jersey.  
 25 Q. Did you have insurance for the cars that

[16] (Pages 58 to 61)

[Page 62]

1 M. Acklin  
 2 you used when you were performing deliveries?  
 3 A. Yeah.  
 4 Q. Did you pay for that insurance?  
 5 A. Sometimes.  
 6 Q. Who else would pay for it on other  
 7 times?  
 8 A. My mother.  
 9 Q. Did you ever get reimbursed by  
 10 The Fresh Diet for the insurance payments?  
 11 A. No.  
 12 Q. Who was the insurance through?  
 13 A. I don't remember.  
 14 (Whereupon, Manifest was marked  
 15 as Defendant's Exhibit 44, for  
 16 identification, as of this date.)  
 17 Q. I'm now showing you what's been marked  
 18 for identification as Defendant's Exhibit 44  
 19 and Bate stamp numbered FD004193 to FD004264,  
 20 and I'm going to ask if, before today, you've  
 21 ever seen the documents in Defendant's  
 22 Exhibit 44 (handing).  
 23 A. Yes.  
 24 Q. What are those documents?  
 25 A. This is a manifest we use to do the

[Page 63]

1 M. Acklin  
 2 route.  
 3 Q. Does that indicate the hours you may  
 4 have worked for The Fresh Diet?  
 5 MR. ANDREWS: Objection.  
 6 A. No.  
 7 Q. It does not?  
 8 A. No.  
 9 Q. Is this a manifest that was given for  
 10 your route?  
 11 A. Yes.  
 12 Q. Turning to the Bate stamp that's marked  
 13 FD004254, do you see that document?  
 14 A. Yes.  
 15 Q. Is that your handwriting on the  
 16 document?  
 17 A. No.  
 18 Q. That's not your handwriting?  
 19 A. No.  
 20 Q. Do you see your handwriting on any of  
 21 the documents that are contained in  
 22 Defendant's Exhibit 44?  
 23 A. Right here (indicating)?  
 24 Q. On any of the documents.  
 25 A. Yeah, this (indicating). This right

[Page 64]

1 M. Acklin  
 2 here (indicating).  
 3 MR. ANDREWS: I'll just give you  
 4 the page number. I don't want to  
 5 interject. FD004260.  
 6 Q. Is that also your handwriting on 4261?  
 7 A. This right here (indicating)?  
 8 Q. Yes.  
 9 A. Yeah.  
 10 Q. What about on 4262?  
 11 A. Yeah.  
 12 Q. What about 4263?  
 13 A. Yeah.  
 14 Q. Besides the documents marked from  
 15 FD004260 to 4263, do you see your handwriting  
 16 on any of the other pages on Defendant's  
 17 Exhibit 44?  
 18 A. On this (indicating).  
 19 MR. ANDREWS: He's referring to  
 20 FD00 --  
 21 THE WITNESS: Not this  
 22 (indicating).  
 23 MR. ANDREWS: No? I'm sorry.  
 24 A. I think this is my handwriting  
 25 (indicating). No. No. No.

[Page 65]

1 M. Acklin  
 2 I think this is my handwriting  
 3 (indicating).  
 4 Q. Referring to FD004251?  
 5 A. Yeah.  
 6 Q. Besides on FD004251 and FD004260 to  
 7 4263, you do not recognize your handwriting on  
 8 any of the other documents, correct?  
 9 A. No. I don't remember.  
 10 Q. Looking at FD004260 to 4263 --  
 11 MR. ANDREWS: He's asking you  
 12 about this, this, this, and this  
 13 (indicating).  
 14 Q. -- what do those numbers under "Cooler,"  
 15 the column "Cooler", indicate?  
 16 A. How many ice packs I got back.  
 17 Q. What do the numbers next to the column  
 18 "Time" indicate?  
 19 A. The time I got there.  
 20 Q. Would the documents from 4260 to 4263  
 21 indicate your route for a particular night?  
 22 A. Yes.  
 23 MR. ANDREWS: Objection.  
 24 Q. Would this consist of the entire route  
 25 for the night?

[17] (Pages 62 to 65)

[Page 66]

1 M. Acklin  
 2 MR. ANDREWS: Objection.  
 3 A. Yeah, I think so.  
 4 Q. On 4260, under the first row, it says  
 5 "713".  
 6 A. Yes.  
 7 Q. Does that mean that the first delivery  
 8 you made was at 7:13 p.m.?  
 9 A. Yes.  
 10 Q. Looking at the last entry on 4263, does  
 11 that mean that the last delivery was it  
 12 2:25 a.m.?  
 13 A. Yes.  
 14 MR. ANDREWS: Objection.  
 15 Q. Yes?  
 16 A. Yes.  
 17 Q. Do you know if you produced the document  
 18 marked as Defendant's Exhibit 44 to your  
 19 attorney as part of this action?  
 20 A. Yes.  
 21 Q. How did you get this document?  
 22 A. I had it at my house.  
 23 Q. Did you have a hard copy, or was it on  
 24 your computer?  
 25 A. I had the papers at my house.

[Page 67]

1 M. Acklin  
 2 Q. A physical copy of it?  
 3 A. Yeah.  
 4 MR. ANDREWS: Objection.  
 5 Q. You refer to Defendant's Exhibit 44 as a  
 6 manifest, correct?  
 7 A. Yes.  
 8 Q. When would you receive this document?  
 9 A. When I got to the kitchen.  
 10 Q. Before you started performing  
 11 deliveries?  
 12 A. Yeah.  
 13 Q. This would contain a date, the number of  
 14 miles, and the number of stops you were to make  
 15 for that night?  
 16 A. Yes.  
 17 MR. ANDREWS: Objection.  
 18 Q. Did you take any breaks during the time  
 19 you performed deliveries?  
 20 A. Sometimes.  
 21 Q. What would you take a break for?  
 22 A. To eat.  
 23 Q. Anything else?  
 24 A. That's it.  
 25 Q. Ever to get gas or go to the restroom?

[Page 68]

1 M. Acklin  
 2 A. Yeah. Gas, yeah.  
 3 Q. Go to the restroom?  
 4 A. Yeah.  
 5 Q. Did you ever keep receipts of the food  
 6 you bought or the gas you purchased during the  
 7 deliveries?  
 8 A. I have some -- I have some gas receipts.  
 9 Q. Some gas receipts?  
 10 A. Yeah.  
 11 Q. Did you ever submit them to Syed to seek  
 12 reimbursement for the gas?  
 13 A. No.  
 14 Q. Did you pay for your own maintenance of  
 15 your car?  
 16 A. Yes.  
 17 Q. Did you pay for your own repairs for the  
 18 car?  
 19 A. Yes.  
 20 Q. Did you ever seek reimbursement from  
 21 Fresh Diet for those expenses?  
 22 A. No.  
 23 I had gas for when I was driving the  
 24 company van, but for my own car, I paid my own  
 25 gas.

[Page 69]

1 M. Acklin  
 2 Q. Where would you take a break to eat  
 3 during deliveries?  
 4 MR. ANDREWS: Objection.  
 5 A. Fast food or drive-through.  
 6 Q. Would you ever go into a restaurant?  
 7 A. No.  
 8 Q. Only drive-through?  
 9 A. Yeah.  
 10 Q. Did you ever go into a grocery or 711?  
 11 A. Yeah, 711.  
 12 Q. Did you ever tell Syed or anyone else at  
 13 The Fresh Diet or Late Night that you were  
 14 taking a break to eat?  
 15 MR. ANDREWS: Objection.  
 16 A. No.  
 17 Q. Did you ever say if you were taking a  
 18 break to get gas?  
 19 MR. ANDREWS: Objection.  
 20 A. No.  
 21 Q. Did you ever take any vacations at any  
 22 point during the time you performed meal  
 23 deliveries?  
 24 A. No.  
 25 Q. Were you ever sick?

[18] (Pages 66 to 69)

[Page 70]

1 M. Acklin  
2 A. No. No.  
3 Q. Did you hold any other jobs during the  
4 time you were performing deliveries for  
5 Late Night?  
6 A. In the beginning, but I had to quit in  
7 the beginning so I could do this job.  
8 Q. What were you doing in the beginning?  
9 A. I had a paper route too.  
10 Q. When was that?  
11 A. In 2007.  
12 Q. What were the hours of that job?  
13 A. Around -- around 3:00 to 6:00.  
14 Q. 3:00 p.m. to 6:00 p.m.?  
15 A. Yeah.  
16 Q. What was the name of that company?  
17 A. At the beginning, I was helping them do  
18 some stops. Then I quit my job, and I got my  
19 own route.  
20 Q. What was the name of the company you  
21 were performing the paper route for?  
22 A. PCF.  
23 Q. PCF?  
24 A. Yeah.  
25 Q. The company you're currently --

[Page 71]

1 M. Acklin  
2 A. Yeah.  
3 Q. -- working for?  
4 A. Yeah, but it was the one in New York.  
5 Q. Where in New York?  
6 A. Elmsford.  
7 Q. Where?  
8 A. Elmsford.  
9 Q. ElmsFord?  
10 A. Yeah.  
11 Q. Where's that?  
12 A. I think it's next to White Plains.  
13 Q. Were you paid by PCF then similarly to  
14 how you're being paid now?  
15 MR. ANDREWS: Objection.  
16 Q. Were you paid per newspaper?  
17 A. Oh, yeah.  
18 Q. When you say you had to quit, what do  
19 you mean?  
20 A. Because it was taking me too long to  
21 finish. I was getting -- I didn't have enough  
22 time to get to the newspaper on time.  
23 Q. The newspaper was before you reported to  
24 Fresh Diet, correct?  
25 A. Yeah.

[Page 72]

1 M. Acklin  
2 Q. When you say you didn't have time to get  
3 there on time, what do you mean?  
4 A. I didn't have enough time to get there  
5 by 3:00. I was getting there late.  
6 Q. Did you receive income from any other  
7 source during the time you were performing  
8 deliveries for Late Night?  
9 MR. ANDREWS: Objection.  
10 A. Can you repeat that?  
11 Q. Did you receive income from any other  
12 source for the time you were performing meal  
13 deliveries?  
14 A. No.  
15 Q. Do you know if, and now we're just  
16 focusing on the time you were performing meal  
17 deliveries as a driver, any taxes were withheld  
18 from your pay?  
19 A. Did they take tax out of my check?  
20 Q. Yes.  
21 A. No.  
22 Q. Do you remember being issued a 1099 at  
23 the end of the year from Late Night?  
24 A. Yeah.  
25

[Page 73]

1 M. Acklin  
2 (Whereupon, 2010 1099 was marked  
3 as Defendant's Exhibit 45, for  
4 identification, as of this date.)  
5 (Whereupon, 2010 1099 was marked  
6 as Defendant's Exhibit 46, for  
7 identification, as of this date.)  
8 (Whereupon, 2011 1099 was marked  
9 as Defendant's Exhibit 47, for  
10 identification, as of this date.)  
11 Q. I'm now showing you a document that's  
12 been marked for identification as Defendant's  
13 Exhibit 45 (handing).  
14 I'm going to ask if you've seen that  
15 document before today.  
16 A. Yeah.  
17 Q. Is that your name on the document?  
18 A. Yes.  
19 Q. Is this a 1099 you received from  
20 Late Night in 2010?  
21 A. Yes.  
22 Q. At that time, were you residing at  
23 7 Robbabins Place in Yonkers (phonetic)?  
24 A. No.  
25 Q. Do you see where it says "Recipient's

[19] (Pages 70 to 73)

[Page 74]

1 M. Acklin  
 2 Identification Number"?  
 3 A. Yeah.  
 4 Q. Do you know what 11-2764745 is?  
 5 A. No.  
 6 Q. Where were you residing in 2010?  
 7 A. In the Bronx.  
 8 Q. Does that accurately reflect the  
 9 compensation, the non-employee compensation,  
 10 you received from Late Night for the year 2010,  
 11 being \$51,786?  
 12 MR. ANDREWS: Objection.  
 13 A. They -- they put the tolls in that  
 14 (indicating).  
 15 Q. The total you received --  
 16 A. No. The money from the tolls that we  
 17 pay, they put it in there, and they put it back  
 18 in the check.  
 19 Q. How do you know that?  
 20 A. Because he tells us to give him how much  
 21 tolls we spent, and then they put it back in  
 22 the check.  
 23 Q. Do you know how much you received in pay  
 24 from Late Night for the year 2010?  
 25 MR. ANDREWS: Objection.

[Page 75]

1 M. Acklin  
 2 A. I don't remember.  
 3 Q. I'm now showing you what's been marked  
 4 for identification as Defendant's Exhibit 46  
 5 (handing).  
 6 I'm going to ask if you've seen that  
 7 document before today.  
 8 A. Yes.  
 9 Q. Is that the same as what's been marked  
 10 as Defendant's Exhibit 45?  
 11 MR. ANDREWS: Objection.  
 12 A. Can you repeat the question?  
 13 Q. Is it the same that's been marked for  
 14 identification as Exhibit 45?  
 15 MR. ANDREWS: Objection.  
 16 A. I think it's a copy of it.  
 17 Q. Do you see where it says, on  
 18 Defendant's 46, "Received March 21, 2011"?  
 19 A. Yeah.  
 20 Q. Did you file this document with any  
 21 agency?  
 22 A. I think this is the one -- I think this  
 23 is the one he printed for me because I lost the  
 24 original one. I think this is the one he  
 25 printed on the computer, so -- yeah, I think

[Page 76]

1 M. Acklin  
 2 this the one I got from Syed (indicating).  
 3 Q. You lost it and requested another one?  
 4 A. Yeah.  
 5 Q. Why did you need another one?  
 6 A. To do taxes.  
 7 Q. Now looking at the document marked as  
 8 Defendant's 47, I'm going to ask if you've ever  
 9 seen that document before today (handing).  
 10 A. Yes.  
 11 Q. What is your understanding of this  
 12 document?  
 13 A. I think this is when I was working in  
 14 the kitchen.  
 15 Q. Do you see where it says "Late Night  
 16 Express Courier Services, Inc." under payer's  
 17 name?  
 18 A. Yeah.  
 19 Q. You previously testified that there was  
 20 a part of 2011 that you performed deliveries as  
 21 a driver, correct?  
 22 A. Yeah.  
 23 Q. Do you know if you received compensation  
 24 from Late Night for those deliveries you  
 25 performed in 2011?

[Page 77]

1 M. Acklin  
 2 MR. ANDREWS: Objection.  
 3 A. Can you repeat the question?  
 4 Q. Did you receive compensation for the  
 5 deliveries you performed as a driver --  
 6 A. Yeah.  
 7 Q. -- for the beginning of 2011?  
 8 A. Did I -- can you repeat it again?  
 9 MR. POLLACK: Can you repeat it?  
 10 (Whereupon, the record was read  
 11 by the reporter.)  
 12 A. Yes.  
 13 Q. Do you know how much you --  
 14 A. I think this is from the driver  
 15 (indicating). I don't remember which one it's  
 16 from.  
 17 Q. Did you file tax returns in 2007?  
 18 A. No.  
 19 Q. Did you file tax returns in 2008?  
 20 A. What's the tax returns for?  
 21 Q. What's that?  
 22 A. What's the tax returns for?  
 23 Q. To pay taxes.  
 24 A. Yeah. Yeah.  
 25 Q. In 2008?

[20] (Pages 74 to 77)



[Page 78]

1 M. Acklin  
 2 MR. ANDREWS: Objection.  
 3 A. I think it -- yeah, I think in 2008 or  
 4 2009.  
 5 Q. Do you know what tax forms you filled  
 6 out?  
 7 A. I don't remember.  
 8 Q. Did you file tax returns in 2009?  
 9 A. I don't remember.  
 10 Q. Did you file tax returns in 2010?  
 11 A. I don't remember.  
 12 Q. Did you file tax returns in 2011?  
 13 A. No.  
 14 Q. Do you ever go to an accountant to  
 15 discuss taxes?  
 16 A. Yes.  
 17 Q. When?  
 18 MR. ANDREWS: Objection.  
 19 A. I think it was -- I think it was 2009.  
 20 Q. Was this an individual you went to or a  
 21 firm?  
 22 A. I don't remember.  
 23 Q. If I left a space in the record for you  
 24 to insert that information, do you have  
 25 anything you can go back to to find that

[Page 79]

1 M. Acklin  
 2 information?  
 3 A. I think so.  
 4 Q. I'm going to leave a space in the  
 5 record, and when you get a copy of the  
 6 transcript, if you can remember the name of  
 7 that accountant --  
 8 A. All right.  
 9 Q. -- just insert it in the record.  
 10 Okay?  
 11 A. All right.  
 12 (INSERT)  
 13 Q. To the extent you can locate any tax  
 14 returns you may have filed between 2007 and  
 15 2011, I'm going to ask for the production of  
 16 those tax returns.  
 17 Okay?  
 18 A. All right.  
 19 Q. Did you have health insurance during the  
 20 time you were performing work as a driver for  
 21 Fresh Diet?  
 22 A. No.  
 23 Q. Did you receive any other benefits or  
 24 any benefits from The Fresh Diet for the period  
 25 you were performing deliveries?

[Page 80]

1 M. Acklin  
 2 MR. ANDREWS: Objection.  
 3 A. No.  
 4 Q. No?  
 5 A. (Witness shakes head.)  
 6 Q. If you can, just verbally answer.  
 7 A. No.  
 8 Q. Do you know the name Judah Schloss?  
 9 A. Yes.  
 10 Q. Who do you know Judah Schloss to be?  
 11 A. One of the owners.  
 12 Q. Of what?  
 13 A. Of Fresh Diet.  
 14 Q. Did you ever have any personal  
 15 interaction with him?  
 16 A. Yeah, I spoke to him before.  
 17 Q. When?  
 18 A. I think 2011.  
 19 Q. Was this when you were in the kitchen?  
 20 A. Yeah.  
 21 Q. Did you speak to him on more than one  
 22 occasion?  
 23 A. Yeah.  
 24 Q. How often?  
 25 A. Not that much.

[Page 81]

1 M. Acklin  
 2 Q. What would you speak about when you  
 3 spoke with him?  
 4 A. I don't remember.  
 5 Q. Do you know the name Zaimi Duchman?  
 6 A. Yes.  
 7 Q. Who do you know Zaimi Duchman to be?  
 8 A. One of the owners.  
 9 Q. Of what?  
 10 A. Of Fresh Diet.  
 11 Q. Did you ever have any personal  
 12 interaction with Mr. Duchman?  
 13 A. No.  
 14 Q. Do you maintain a cell phone?  
 15 A. Yes.  
 16 Q. Do you have the same cell phone now that  
 17 you had when you started performing deliveries  
 18 in 2007?  
 19 A. No.  
 20 Q. Did you have a cell phone when you  
 21 started performing deliveries in 2007?  
 22 A. Yes.  
 23 Q. Did you ever communicate with anyone at  
 24 Late Night or The Fresh Diet with that cell  
 25 phone?

[21] (Pages 78 to 81)

[Page 82]

1 M. Acklin  
 2 MR. ANDREWS: Objection.  
 3 A. Yeah.  
 4 Q. Would you text?  
 5 A. No.  
 6 Q. How would you communicate?  
 7 A. Call them.  
 8 Q. Telephone calls?  
 9 A. Yeah.  
 10 Q. Did you ever have a cell phone during  
 11 the time you performed work as a driver where  
 12 you texted with someone at Late Night or  
 13 The Fresh Diet?  
 14 MR. ANDREWS: Objection.  
 15 A. Have I text somebody?  
 16 Q. Yes.  
 17 A. I think I text Syed.  
 18 Q. What would you text Syed about?  
 19 A. About a stop.  
 20 Q. Can you give me an example of what you  
 21 would text?  
 22 MR. ANDREWS: Objection.  
 23 A. That I did the stop or how many bags  
 24 they send back --  
 25 Q. Would this be during --

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1 M. Acklin  
 2 A. -- or what time I finished a route.  
 3 Q. This would be at the end of the route?  
 4 A. Yeah --  
 5 MR. ANDREWS: Objection.  
 6 A. -- and sometimes between a route.  
 7 Q. Did you always text him when you  
 8 finished your route?  
 9 MR. ANDREWS: Objection.  
 10 A. No.  
 11 Q. Did you otherwise report to him when you  
 12 finished a route?  
 13 MR. ANDREWS: Objection.  
 14 A. No. I think only like once or twice.  
 15 MR. POLLACK: Pending the  
 16 production of the additional documents  
 17 requested, I have no further questions  
 18 for Mr. Acklin.  
 19 (Time Noted: 1:05 p.m.)  
 20 \_\_\_\_\_  
 21 MARQUIS ACKLIN  
 22 Subscribed and sworn to before me  
 23 this \_\_\_\_ day of \_\_\_\_\_, 2013.  
 24 \_\_\_\_\_  
 25 Notary Public

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[Page 85]

1  
 2 CERTIFICATE  
 3  
 4 I, MELISSA KAHANE, hereby certify that  
 5 the Examination Before Trial of Marquis Acklin  
 6 was held before me on the 2nd day of October,  
 7 2013; that said witness was duly sworn before  
 8 the commencement of his testimony; that the  
 9 testimony was taken stenographically by myself  
 10 and then transcribed by myself; that the party  
 11 was represented by counsel as appears herein;  
 12 That the within transcript is a true  
 13 record of the Examination Before Trial of said  
 14 witness;  
 15 That I am not connected by blood or  
 16 marriage with any of the parties; that I am not  
 17 interested directly or indirectly in the  
 18 outcome of this matter; that I am not in the  
 19 employ of any of the counsel.  
 20 IN WITNESS WHEREOF, I have hereunto set  
 21 my hand this 2nd day of October, 2013.  
 22  
 23 \_\_\_\_\_  
 24 MELISSA KAHANE  
 25

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